

HOUSE BILL 1192

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P2

2004 Regular Session
4r1720
CF 4r2528

By: **Delegates Taylor, Anderson, Barkley, Barve, Benson, Bobo, Bozman, Bromwell, Bronrott, Brown, Burns, Cane, Cardin, Carter, V. Clagett, Conroy, C. Davis, DeBoy, Donoghue, Doory, Dumais, Feldman, Franchot, Frush, Gaines, Goldwater, Goodwin, Gordon, Griffith, Gutierrez, Hammen, Harrison, Haynes, Healey, Heller, Hixson, Holmes, Howard, Hubbard, Hurson, Impallaria, Jameson, Jones, Kaiser, Kelley, King, Kirk, Krysiak, Lee, Madaleno, Malone, Mandel, Marriott, McHale, McIntosh, Menes, Moe, Montgomery, Murray, Niemann, Oaks, Paige, Parker, Patterson, Pendergrass, Petzold, Proctor, Quinter, Ramirez, Rosenberg, Ross, Simmons, Stern, F. Turner, V. Turner, Vallario, Vaughn , Weir, Wood, and Zirkin**

Introduced and read first time: February 13, 2004

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement Contracts - Living Wage**

3 FOR the purpose of requiring certain contractors and subcontractors to pay certain
4 employees a certain minimum wage level under certain State procurement
5 contracts; providing certain exemptions and reductions in a certain wage level;
6 requiring the Commissioner of Labor and Industry to prescribe a living wage
7 level based on a certain Consumer Price Index and to administer and enforce
8 requirements with regard to employees; requiring certain units of State
9 government to adopt regulations and authorizing certain units to grant certain
10 waivers; granting certain employees rights of free speech and association;
11 requiring covered employers to post certain information; authorizing an
12 employee to sue for certain damages under certain circumstances; providing
13 certain remedies and certain procedural requirements; prohibiting an employer
14 from retaliating against an employee based on a certain action; establishing
15 certain penalties; defining certain terms; and generally relating to levels of
16 wages paid to employees under certain procurement contracts.

17 BY repealing and reenacting, without amendments,
18 Article - State Finance and Procurement
19 Section 11-101(x)
20 Annotated Code of Maryland
21 (2001 Replacement Volume and 2003 Supplement)

22 BY adding to
23 Article - State Finance and Procurement

1 Section 12-101(c); and 18-101 through 18-110, inclusive, to be under the new
2 title "Title 18. Living Wage"
3 Annotated Code of Maryland
4 (2001 Replacement Volume and 2003 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - State Finance and Procurement**

8 11-101.

9 (x) (1) "Unit" means an officer or other entity that is in the Executive
10 Branch of the State government and is authorized by law to enter into a procurement
11 contract.

12 (2) "Unit" does not include:

13 (i) a bistate, multistate, bicounty, or multicounty governmental
14 agency; or

15 (ii) a special tax district, sanitary district, drainage district, soil
16 conservation district, water supply district, or other political subdivision of the State.
17 12-101.

18 (C) AFTER CONSULTATION WITH THE COMMISSIONER OF LABOR AND
19 INDUSTRY, THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION
20 OF TITLE 18 OF THIS ARTICLE TO CONTRACTORS AND SUBCONTRACTORS SUBJECT TO
21 THE PROVISIONS OF TITLE 18 OF THIS ARTICLE.

22 **TITLE 18. LIVING WAGE.**

23 18-101.

24 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

25 (B) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND INDUSTRY.

26 (C) "EMPLOYER" MEANS A FOR PROFIT ENTITY THAT:

27 (1) HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR
28 MORE; OR

29 (2) HAS A SUBCONTRACT FOR SERVICES VALUED AT \$25,000 OR MORE
30 UNDER A CONTRACT COVERED UNDER ITEM (1) OF THIS SUBSECTION.

31 (D) "LIVING WAGE" MEANS AN HOURLY WAGE SET AS PROVIDED UNDER §
32 18-103 OF THIS TITLE.

1 18-102.

2 (A) THIS TITLE APPLIES TO AN EMPLOYEE OF AN EMPLOYER FOR THE
3 DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT LEAST ONE-HALF OF THE
4 EMPLOYEE'S TIME DURING ANY WORK WEEK RELATES TO A STATE CONTRACT FOR
5 SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE CONTRACT.

6 (B) THIS TITLE DOES NOT APPLY TO A CONTRACT:

7 (1) FOR SERVICES NEEDED IMMEDIATELY TO PREVENT OR RESPOND TO
8 AN IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY;

9 (2) WITH A PUBLIC SERVICE COMPANY;

10 (3) WITH A NONPROFIT ORGANIZATION; OR

11 (4) WITH THE STATE OR A PRINCIPAL UNIT OF STATE GOVERNMENT.

12 (C) IF THE UNIT RESPONSIBLE FOR A STATE CONTRACT DETERMINES THAT
13 APPLICATION OF THIS TITLE WOULD CONFLICT WITH ANY APPLICABLE FEDERAL
14 PROGRAM REQUIREMENT, THIS TITLE DOES NOT APPLY TO THE CONTRACT OR
15 PROGRAM.

16 18-103.

17 (A) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN
18 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER
19 THIS TITLE AT LEAST \$10.50 PER HOUR.

20 (B) THE COMMISSIONER SHALL ADJUST THE WAGE RATE REQUIRED UNDER
21 SUBSECTION (A) OF THIS SECTION ANNUALLY BY THE ANNUAL AVERAGE INCREASE,
22 IF ANY, IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE
23 WASHINGTON-BALTIMORE METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR
24 THE PREVIOUS CALENDAR YEAR.

25 (C) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS
26 UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN
27 EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER TITLE
28 17, SUBTITLE 2 OF THIS ARTICLE OR THIS TITLE.

29 (D) IF AN EMPLOYER COMMITS IN ITS BID OR PROPOSAL TO PROVIDE HEALTH
30 INSURANCE TO AN EMPLOYEE, THE EMPLOYER MAY:

31 (1) CERTIFY IN ITS BID OR PROPOSAL THE HOURLY COST OF THE
32 EMPLOYER'S SHARE OF THE PREMIUM FOR THAT INSURANCE FOR EACH EMPLOYEE;
33 AND

34 (2) REDUCE THE WAGE PAID UNDER SUBSECTION (A) OF THIS SECTION
35 TO ANY EMPLOYEE COVERED BY THE INSURANCE BY ALL OR PART OF THE HOURLY
36 COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR EACH EMPLOYEE.

1 18-104.

2 (A) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
3 EMPLOYERS SUBJECT TO THIS TITLE.

4 (B) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER KEEP RECORDS
5 AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER
6 DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND
7 ENFORCEMENT OF THIS TITLE.

8 18-105.

9 (A) AN EMPLOYEE COVERED UNDER THIS TITLE HAS A RIGHT OF FREE
10 SPEECH AND ASSOCIATION.

11 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN AGREEMENT
12 BY AN EMPLOYEE TO COMMUTE, RELEASE, OR WAIVE THE EMPLOYEE'S RIGHTS
13 UNDER THIS TITLE IS VOID.

14 (2) WAGE RATES REQUIRED UNDER THIS TITLE MAY BE MODIFIED
15 THROUGH A BONA FIDE COLLECTIVE BARGAINING AGREEMENT.

16 18-106.

17 (A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF THE EMPLOYER IS
18 ENTITLED TO A WAGE RATE UNDER THIS TITLE, EACH EMPLOYER SUBJECT TO THIS
19 TITLE SHALL POST IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT THE WORK
20 SITE A NOTICE OF:

21 (1) THE LIVING WAGE RATE;

22 (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND

23 (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
24 COMMISSIONER.

25 (B) THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH,
26 SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE
27 WORK SITE.

28 (C) SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE
29 COMMISSIONER MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A CIVIL
30 PENALTY NOT EXCEEDING \$50 PER VIOLATION.

31 18-107.

32 (A) THE COMMISSIONER SHALL INVESTIGATE A COMPLAINT UNDER THIS
33 TITLE.

1 (B) A WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN EMPLOYEE
2 UNDER THIS TITLE IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO THE
3 EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE.

4 (C) AN EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE
5 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE AND
6 PAYROLL RECORDS, AND ALLOW AN OPPORTUNITY TO INTERVIEW EMPLOYEES FOR
7 PURPOSES OF ENFORCING THIS TITLE.

8 (D) (1) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION, THE
9 COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING.

10 (2) WITHIN 30 DAYS BEFORE THE HEARING, THE COMMISSIONER SHALL
11 SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON ALL
12 INTERESTED PARTIES.

13 (3) THE NOTICE SHALL INCLUDE:

14 (I) A STATEMENT OF FACTS DISCLOSED IN THE INVESTIGATION;
15 AND

16 (II) THE TIME AND PLACE OF THE HEARING.

17 (4) IN CONDUCTING A HEARING, THE COMMISSIONER MAY:

18 (I) SUBPOENA WITNESSES;

19 (II) ADMINISTER OATHS; AND

20 (III) COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, AND
21 OTHER EVIDENCE.

22 (E) (1) AFTER THE CONCLUSION OF THE HEARING, THE COMMISSIONER
23 SHALL:

24 (I) ISSUE A DETERMINATION; AND

25 (II) SERVE, PERSONALLY OR BY MAIL, EACH INTERESTED PARTY
26 WITH A COPY OF THE DETERMINATION.

27 (2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE
28 COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND
29 LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 18-108 OF THIS TITLE.

30 (3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL PAY
31 THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE
32 COMMISSIONER'S DETERMINATION.

1 18-108.

2 IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A
3 PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE
4 EMPLOYER SHALL:

5 (1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND

6 (2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY FOR EACH
7 EMPLOYEE WHO IS PAID LESS THAN THE HOURLY RATE REQUIRED UNDER THIS
8 TITLE.

9 18-109.

10 (A) (1) IF AN EMPLOYEE IS PAID LESS THAN THE WAGE RATE REQUIRED
11 UNDER THIS TITLE OR IF AN EMPLOYER RETALIATES AGAINST THE EMPLOYEE
12 SOLELY BECAUSE THE EMPLOYEE EXERCISED RIGHTS GRANTED UNDER THIS TITLE,
13 THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER TREBLE THE AMOUNT OF THE
14 DIFFERENCE BETWEEN THE WAGE RATE REQUIRED UNDER THIS TITLE AND THE
15 AMOUNT RECEIVED BY THE EMPLOYEE.

16 (2) A DETERMINATION BY THE COMMISSIONER THAT AN EMPLOYER IS
17 REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN EMPLOYEE FROM
18 FILING AN ACTION UNDER THIS SECTION.

19 (B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A SUIT FOR
20 WAGES.

21 (2) A JUDGMENT IN AN ACTION UNDER THIS SECTION SHALL HAVE THE
22 SAME FORCE AND EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

23 (C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN WRITING THE
24 PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE REQUIRED UNDER THIS
25 TITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER THIS SECTION.

26 (D) IN ADDITION TO DAMAGES UNDER SUBSECTION (A)(1) OF THIS SECTION,
27 THE COURT MAY AWARD AN EMPLOYEE WHO SUCCESSFULLY COLLECTS WAGES
28 UNDER THIS SECTION THE REASONABLE COSTS OF FILING THE LAWSUIT,
29 INCLUDING REASONABLE ATTORNEY FEES.

30 18-110.

31 (A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE SOLELY
32 BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS TITLE.

33 (B) AN EMPLOYER WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS
34 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT
35 EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2004.